

## REMARKS

### 1. Status of the Claims

Applicant has carefully reviewed and considered the Final Office Action mailed on March 23, 2006, and the references cited therewith.

Claims 1-10 were pending. Claim 1 is amended. No new matter has been added and the amendments are fully supported by the specification. As a result, Claims 1-10 are now pending in this application.

Applicant respectfully requests reconsideration of the above-identified patent application in view of the following remarks.

### 2. Rejection Under 35 U.S.C. §103(a)

In the Office Action, Claims 1-10 were again rejected under 35 U.S.C. §103(a) as being unpatentable over the teachings of the same cited references in a prior office action dated November 9, 2005. Nevertheless, Applicant respectfully disagrees and requests that the Examiner reconsider his Final Rejection.

In order for the cited references to be anticipatory, they must suggest Applicant's invention and the invention should not be anticipated by hindsight or working backwards from Applicant's invention. That being said, Applicant believes that the cited references were viewed with the benefit of impermissible hindsight afforded by Applicant's claimed invention. The temptation to engage in impermissible hindsight is especially strong with seemingly simple mechanical inventions, which is the case in the present application. Therefore, the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. Applicant believes that such showing is lacking in the Office Action.

Prior to the time when the present invention was conceived, there was no teaching or motivation for the one skilled in the art to look for an improved adhesive to bond the liner and the bathtub. The Office Action makes a hindsight obviousness rejection based on an assumption that "[s]ince the bond line between a liner and a bathtub is expected to be exposed regularly with water, one in the art would have been motivated to look for solution(s) to a related adhesive bonding art which would enable to form a water-tight seal/bond between the liner and the bathtub." If that was the case, however, the cited references in the bathtub lining art would have

recognized and addressed such problem because a bathtub liner installation has been well known in the art. Instead, neither of Parkay, Saladino nor May recognized and/or looked for an improved method of adhering a bathtub liner and bathtub.

Since an efficient method of installing a bathtub liner employing urethane foam was not recognized prior to the present application, the person of ordinary skill in the art would not have looked at the secondary references, either. In the Office Action, the Examiner makes a conclusory statement that since the secondary references teach using a foamable polyurethane adhesive, it would have suggested to the one skilled in the art that such adhesive would be suitable for installing a bathtub liner over an existing bath tub. However, this is another example of hindsight obviousness rejection. There must be some motivation to combine the prior art teachings in the particular manner claimed, which is to use a urethane foam as adhesive in bathtub lining installation. If we take Applicant's disclosure away from the person of ordinary skill in the art, there is no suggestion or motivation to use urethane foam to bond between a bathtub liner and an existing bathtub.

Additionally, one of many advantages in the present application is to eliminate the formation of air pockets between the liner and the bathtub. Although May addresses this problem by applying pressure to the top surface of the liner (Col. 4, Lines 54-57), the present application recognized that even with the application of pressure, a number of air pockets will unavoidably form between the liner and bathtub after the installation (Paragraph 0006). Therefore, the cited art in the bathtub lining art do not teach or suggest to the one skilled in the art to apply a urethane foam to eliminate the air pockets between the liner and the bathtub.

The cited art also fail to teach or suggest insulating the bathtub.

Applicant's present invention as claimed uses urethane foam to also effectively insulate the bathtub.

Since none of the cited references recognized advantages discussed in Applicant's invention, no motivation to combine exists. Therefore, it is quite evident that without Applicant's disclosure, Applicant's invention as set forth in Claim 1 would not be obvious to an ordinary person skilled in the art.

Claims 2-10 depend from independent Claim 1. Accordingly, Claims 2-10 include additional limitations to independent Claim 1 and points to additional aspects or features regarding specific embodiments of the present application. For these reasons, Applicant


respectfully submits that Claims 1-10 are in condition for allowance.

3. Conclusion

Based on the above, the applicant submits that Claim 1 is not taught, disclosed, or obviated by the references cited in the Office Action, and should therefore be in patentable condition as written. Further, the remaining Claims in the application, namely Claims 2-10, all depend from the above-mentioned Claim 1, and therefore contain all limitations of that Claim. Therefore, all of Claims 1-10 should be in patentable condition as claimed. As such, reconsideration and passage to allowance of Claims 1-10 is respectfully requested.

Respectfully submitted,  
FACTOR & LAKE, LTD.

Dated: June 23, 2006

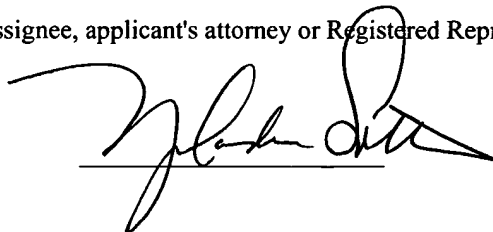
  
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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Patent Postal Service as first class mail in an envelope addressed to: Mail Stop - RCE, Assistant Commissioner for Patents, Washington, D.C. 20231 on June 23, 2006.

Yolanda Solis

Name of Applicant, assignee, applicant's attorney or Registered Representative

  
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